

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAVID E. MACK

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Plaintiff,

VS.

Case No. 4:11CV349

ADVANTAGE ASSETS II, INC.

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Defendant.

ORDER

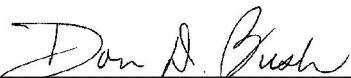
Now before the Court is Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (Dkt. 5). Since the filing of Defendants' motion, Plaintiff has filed an amended complaint (*see* Dkt. 10). Therefore, Defendants' Motion to Dismiss (Dkt. 5) is DENIED as MOOT. The Court will address any Rule 12 motions as to the live pleadings only.

Plaintiff's Answer includes a Motion to Dismiss Counterclaim (Dkt. 12). The motion is DENIED without prejudice to Plaintiff re-filing a motion to dismiss that contains the basis for dismissal. Merely stating that the counterclaim should be dismissed for failure to state a claim, without any argument, authorities or specific facts from the case, is not enough for the Court or Defendant to address.

Further, the Clerk of Court is directed to strike from the record Docket Entry 14 which is discovery not to be filed with the Court but exchanged by the parties as the rules dictate.

SO ORDERED.

SIGNED this 26th day of August, 2011.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE